

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1352 OF 2023

- 1) Shweta Dinesh Kasliwal)
Aged 42 years, Occupation)
Residing at 5/339, Kasliwal Sadam,)
Maheshwari Road, Kagwade Mala,)
Hatkanangale, Ichalkaranji,)
Kolhapur – 416115)
- 2) Shantilal Hariram Sharma)
Aged 42 years, Occupation)
Residing at Teen Batti Char Rasta,)
Ichalkaranji)
- 3) Laxmikant Shankar Kulkarni)
Aged 35 years, Occupation)
Residing at Aasra Nagar,)
Siddhivinayak Colony, Ichalkaranji)
- 4) Sugana Ram Hemaram Kala)
Aged 47 years, Occupation)
Residing at Teen Batti Char Rasta,)
Ichalkaranji)
- 5) Ranjitkumar Chouhan)
Aged 31 years, Occupation)
Residing at Yadray, Beg Ghar Colony,)
Taluka Shirol)
- 6) Ajim Rafik Latkar)
Aged 35 years, Occupation)
Residing at Sangamnagar, Tardal,)
Hatkanangale)
- 7) Sandeep Ratnakar Nandre)
Aged 25 years, Occupation)
Residing at Kodigre, Nandre Mala,)
Shirol)

.. Applicants

Versus

- | | | |
|---------------------------------------|---|----------------|
| 1)The State of Maharashtra |) | |
| 2) Ujwala Vishnu Yadav |) | |
| Occupation Women Police Naik, |) | |
| Bucle No.43, Shahapur Police Station, |) | |
| Hathkanangle, Kolhapur |) | |
| 3) Senior Police Inspector, |) | |
| Shahapur Police Station, |) | |
| Hathkanangle, Kolhapur |) | .. Respondents |

Mr. Amin Solkar, Advocate a/w. Gaurav Shenoy for Applicants
 Mr. V.B. Konde-Deshmukh, APP for State.

**CORAM: A. S. GADKARI AND
 SHYAM C. CHANDAK, JJ.**

DATE : 30th NOVEMBER, 2023

JUDGMENT [PER: SHYAM C. CHANDAK, J.]

1) Present Application is filed under Section 482 of the Code of Criminal Procedure, 1973, seeking quashing and setting aside of F.I.R. bearing C.R. No.227/2023, registered on dated 25th June, 2023 with *Shahapur* Police Station, District Kolhapur for the offences punishable under Sections 353, 143, 147, 149 and 504 of the Indian Penal Code, 1860.

2) As narrated in the impugned F.I.R, on 24th June, 2023 Mr. Mungse, Police Head Constable, attached to *Shahapur* Police Station, was assigned with the investigation of F.I.R. No.224/2023, registered with the same Police Station for the offences punishable under Sections

448, 207,143,147, 149, 427, 323, 504, 506 of the Indian Penal Code. On 24th June, 2023, Mr. Mungse went to record the spot panchnama of the said crime at *Yadrav Gram Panchayat* property bearing Card No. 476/1, 26A, 26B, 27A, 27B, 27C (*'said property'*, for short). But the Applicants did not allow Mr. Mungse to record the spot panchnama. Therefore, at about 19:30 hours, Mr. Patil-Asstt. P.I., Mr. Mungse, Respondent No.2-Ujjwala Yadav-L.P.C. and other Police personnel went to the said spot to do the needful. But at that time, the Applicants formed an unlawful assembly, created a dispute with the said Police party, scuffled with them and abused. Thus, the Applicants in furtherance of their common object of unlawful assembly assaulted and/or used criminal force to the said Police personnel in the execution of their duty as public servants, prevented/deterred them from discharging their duty as public servants. Hence, Respondent No.2 lodged the impugned F.I.R. But the Applicants claim that they are innocent and falsely implicated in this F.I.R. Hence, this Application.

3) Heard Shri Amin Solkar, learned counsel for the Applicants and Mr. V.B. Konde-Deshmukh, learned APP for the State. Perused the Application and the documents annexed thereto.

4) Learned counsel for the Applicants submitted that, in the year 2019 and 2020, husband of Applicant No.1, who is owner of M/s. *Maa Padmavati* Fabrics India Pvt. Ltd., had taken a loan of Rs.16,85,00,000/-

from *Dombivali Nagari Sahakari Bank Ltd., Ichalkaranji Branch*, against which the said property was kept as security. The said Company committed default in repayment of the loan amount. Therefore, the bank obtained an Order from the District Magistrate, Kolhapur, under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, to enforce the security interest in the said property created in favour of the bank. Accordingly, on 29th May, 2023, the Circle Officer, *Shirdhone*, handed over possession of the said property to the bank by sealing the locks and affixing the recovery notice on the property.

4.1) Learned counsel vehemently submitted that, according to the Order of the Learned District Magistrate, the Bank was permitted to take possession of only said property but without the movable property of the said Company, worth Rs.21,87,74,600/-, lying in the premises of the said property. However, the said movable property was locked in the process of sealing the premises of the said property. Hence, the said action was illegal.

4.2) Learned counsel submitted that on 22nd June, 2023, officials of the said bank illegally broke seal of the said property without requisite Order/permission of the District Magistrate and tried to steal the said movable property. Therefore, Applicant No.1, her husband and others confronted, obstructed and opposed the said act of the bank officials and then filed a complaint against the said bank officials which was registered as

NC dated 22nd June, 2023 for the offences u/Secs.323, 504 and 34 of the Indian Penal Code (Exh.-‘C’). On the same day, on the complaint of the bank official NC was registered against husband of Applicant No.1 and others for the offences u/Secs.323, 504 and 34 of the Indian Penal Code (Exh.-‘D’). Learned Advocate submitted that, on 23rd June, 2023 the said bank officials returned to the said property to cover up their illegal intrusion. Hence, husband of Applicant No.1 and others again confronted the bank officials. Based upon this incident one bank official lodged a complaint pursuant to which the said F.I.R. No.224/2023 came to be registered (Exh.-‘E’). Thereafter, the member of the said Police party having hand in gloves with the officials of the bank were allowing the latter to interfere with the said Company’s lawful possession over the movable property and misappropriate the same. Thus, the police acted in colorable exercise of their powers. Later on, Respondent No.2 filed the impugned F.I.R., falsely just to support the said illegal action of the bank officials.

5) Per contra, learned APP has submitted that considering the text in the impugned F.I.R., it is sufficient to constitute the offences levelled against the Applicants. There was no reason for the Police party to illegally support the recovery action of the bank officials and file the impugned F.I.R. Thus, there is prima facie case against the Applicants. Hence, the Application is liable to be rejected.

6) Looking at the rival submissions and the documents annexed with the application, there is no dispute that husband of Applicant No.1 and others had borrowed crores of rupees as loan by pledging the immovable property. Since the borrowers defaulted in repayment of the loan amount, action under the provisions of SARFAESI Act was initiated and possession of the property pledged was taken by the bank officials on 29th May, 2023 in Police protection. Then the said property was sealed displaying the possession notice there. In addition, security guards were appointed there to protect the possession of the bank.

7) As can be gathered from the NC complaint and F.I.R. No.224/2023 (Exh.-'D' and 'E'), on 22nd June, 2023, the bank officials were doing the valuation of the said property including machineries etc. lying there. At that time, the borrower Dinesh Kasliwal along with Uday Kamble, Youvraj Jadhav, Yogesh Karvekar, 2-3 women and 20-25 workers unlawfully entered in the premises of the said property and obstructed the valuation process. They also broke the possession seals put on the inside and outside locks of the said property. Further they refused to withdraw them from the said premises, threatened that the borrowers will not repay the loan amount, abused the bank official, threatened to kill them and scuffled with them. Therefore, NC complaint (Exh.-'D') was filed by the bank official. Then, Applicant No.1 also filed the NC complaint against bank officials (Exh.-'C').

8) There is nothing on record to infer that the action of loan recovery and taking possession of the said property by the bank official was illegal, erroneous and intended to harass the borrowers. On the contrary, the facts of the case indicate that, the borrowers avoided to repay the huge loan amount, which is a 'public money'. Therefore, the bank initiated the said action. However, the persons named in F.I.R. No.224 of 2023 caused the incident narrated therein. It is pertinent to note that, on 23rd June also the borrowers and their workers were present in the premises of the pledged property, thus, they were illegally encroaching upon the said property even though its possession was legally taken by the bank. Hence, ultimately, Shrikant Birje filed the complaint pursuant to which the F.I.R. No.224 of 2023 came to be registered.

9) The F.I.R. No.224 of 2023 clearly mentions that the movable property was also pledged to secure the repayment of the loan amount. That apart, it is not the case that the valuation statements (Exh.-'B' colly.) are part of the investigation material. Moreover, the Applicants did not produce the loan agreement to show that the movable property was not at all pledged. Hence, the submission by learned counsel that certain movable property was not pledged, is not true but a false claim.

10) Be that as it may, the unverified valuation statements (Exh.-'B' colly.) and the pleadings plus submissions related to that constitute the

defence of the Applicants during the trial. It is settled position of law and as has been enunciated by this Court in the case of *Hemendra Pranjivan Bosmiya vs. State of Maharashtra*, in Cril. Appln. No.227 of 2023 (BOM), appreciation of the evidence *i.e.* veracity of the impugned F.I.R and examination of the defence of the accused at this stage of the matter amounts to mini trial, hence, not permissible in law while exercising our jurisdiction under Section 482 of Cr.PC.

11) Prima facie, the F.I.R. No.224 of 2023 (Exh.-‘E’) indicates that, the bank officers went to the premises of the pledged property to make valuation of the pledged property and the movable property, lying there. However, the accused persons named in the said F.I.R unlawfully prevented the bank officials from doing the said valuation work and committed the offences stated in the said F.I.R. Hence, the Police party went to the spot to record the spot panchanama. The Applicants, however, did not allow Mr. Mungse to do the spot panchnama. Therefore, Mr. Patil, Asstt. PI. including Mr. Mungse and other police personnel went to the said property to perform their duty. Yet, the Applicants did not allow the said police to do their duty and instead scuffled with them by forming an unlawful assembly. Therefore, Respondent No.2 was compelled to file the impugned F.I.R. against the Applicants. Otherwise, Respondent No.2 had no reason to file that F.I.R.

12) The second limb of the submissions by learned counsel for the Applicants is that, even if the prosecution story in the impugned F.I.R. is taken as it is, the offences alleged therein cannot be made out against the Applicants. Therefore, on this count also the impugned FIR is liable to be quashed and set aside. To accept the submissions, the learned Advocate relied upon the judgment of this Court in the case of *Amer Khan S/O Anwar Khan vs. The State of Maharashtra and Ors. in Criminal Application No.3312 of 2019 decided on 22nd February, 2023* (AUB). In this context it is essential to consider Section 353 of the Indian Penal Code, which read thus:

Section 353:- Assault or criminal force to deter public servant from discharge of his duty- *Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

13) In the above context, the impugned F.I.R. clearly states that at the relevant time the Applicants abused and scuffled with the Police and thus, they prevented the Police from recording the spot panchanama, which was part of their public duty. In our considered view, this act of the

Applicants was enough to cause necessary fear and annoyance to the said Police and also cessation of motion to them. Thus, there was intentional use of force. This the Applicants deliberately did in execution of the duty by the Police or with intent to prevent or deter them from discharging their duty or in consequence of they attempted to record the spot panchnama. Hence, this is a clear case of the offences stated in the impugned F.I.R. In so far as the cited case of *Amer Khan S/O Anwar Khan (supra)* is concerned, there was no element of lawful discharge of duties by Respondent No.2-the public servant therein, therefore, this citation is of no avail to the Applicants.

14) The upshot of the above discussion is that, there is prima facie case against the Applicants of having committed the offences stated in the impugned F.I.R. There is nothing to conclude that, the impugned F.I.R. smacks with malafide. On the contrary, looking at the facts and circumstances, this case is nothing but a clear example of an unsuccessful attempt by the Applicants to take forceful possession of the pledged property, which was otherwise fit to remain sealed and in possession of the bank officials until the recovery of the unpaid loan amount. Hence, this Application is liable to be dismissed. We order accordingly.

15) Criminal Application No.1352 of 2023 is dismissed.

(SHYAM C. CHANDAK,J.)

(A. S. GADKARI, J.)